MAY 16 1986

Y 1.1/8: 99-584

99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-584

COMPLETED 3

RAY A. BONNEY

MAY 7, 1986.—Referred to the Committee of the Whole House and ordered to be printed

Mr. GLICKMAN, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1291]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1291) for the relief of Ray A. Bonney, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The bill, H.R. 1291, would relieve Mr. Bonney of all liability for repayment to the United States of the sum of $16,890.98 plus accrued interest, which represents the amount that Mr. Bonney is indebted to the Department of Defense for payments which he erroneously received for travel and relocation expenses arising from his relocation from Pequannock, NJ to St. Louis, MO, to accept employment with the Department of Defense.

STATEMENT

Mr. Bonney was transferred from the U.S. Postal Service to the Department of Defense in 1983. He was erroneously reimbursed for travel and relocation expenses resulting from his transfer to the Department of Defense.

While sections 5724 and 5724a of title 5, United States Code, provide that employees transferring from one executive agency to another may be reimbursed for travel and relocation expenses after he had made his move and assumed his duties with the Department of Defense, it was determined that as a former Postal Service employee, Mr. Bonney was not covered. The Department of Defense, who advised Mr. Bonney, assumed that the U.S. Postal Service was an "executive agency" for this purpose. However, the

71-007 O

ORIGINAL

BEST COPY AVAILABLE

Postal Reorganization Act of 1970, which established the independent Postal Service, excluded the Postal Service from the definition of an "executive agency" for the purpose of title 5, United States Code. The payment made to Mr. Bonney was thus erroneous.

The erroneous payment in this case was caused by a misinterpretation of applicable regulations relating to eligibility for relocation allowances and the payments were accepted in good faith by the employee in question. There is no recourse in this situation other than an appeal to Congress since the Comptroller General has consistently ruled that the United States is not bound by erroneous or unauthorized acts of its officers and employees. Such a misinterpretation may not, therefore, serve as a legal basis for an exception to the regulations, and no other administrative remedy is available.

The relief provided by this bill is similar to that granted former Postal Service employees in Private Law 98-2 in 1983. The bill in that case was introduced as recommended in an executive communication from the Department of Labor. The employees had transferred to that Department and were faced with the same problem as Mr. Bonney.

In its report to the committee on the bill, the Department of Defense noted that Mr. Bonney had relied in good faith on the Department's misinterpretation of the regulation concerning relocation allowances. It recognized the inequitable position which was imposed on Mr. Bonney through no fault of his own. Accordingly, the Department stated that it recognized the merit of this case for legislative relief and supported the enactment of H.R. 1291.

The committee recommends that the bill be favorably considered.

[The favorable report of the Department of Defense is as follows:]

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE,
Washington, DC, February 28, 1986.

Hon. PETER J. RODINO,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to present the views of the Department of Defense on H.R. 1291, 99th Congress, a bill "For the relief of Ray A. Bonney" that has been referred to your committee.

The bill seeks to relieve Mr. Bonney of all liability for repayment to the United States of the sum of $16,890.98 plus accrued interest which represents the amount that Mr. Bonney is indebted to the Department of Defense for payments which he erroneously received for travel and relocation expenses arising from his relocation from Pequannock, NJ, to St. Louis, MO, to accept employment with the Department of Defense.

Mr. Bonney was one of three employees who were transferred from the U.S. Postal Services to the Department of Defense in 1983. The other employees, Mr. Christy Carl Hallien of Arlington, TX, and Mr. Michael R. Shiohama of Anaheim, CA, are the subjects of S. 897 and S. 1297. All three of these employees were erroneously reimbursed for their travel and relocation expenses resulting from their transfer to the Department of Defense.

Under 5 U.S.C. 5724 and 5724a, employees transferring from one executive agency to another may be reimbursed for travel and relocation expenses. The Department of Defense who advised Mr.

BEST COPY AVAILABLE

Bonney and others assumed that the U.S. Postal Service was an "executive agency" for this purpose. However, the Postal Reorganization Act of 1970, which established the independent Postal Service, excluded the Postal Service from the definition of an "executive agency" for the purposes of title 5, United States Code. The payments made to Mr. Bonney and the others were thus clearly erroneous.

The erroneous payments in this case were caused by a misinterpretation of applicable regulations relating to eligibility for relocation allowances and the payments were accepted in good faith by the employees in question. The Comptroller General has consistently ruled that the United States is not bound by erroneous or unauthorized acts of its officers and employees. Such a misinterpretation may not, therefore, serve as a legal basis for an exception to the regulations, and no other administrative remedy is available.

The Department of Defense understands that inequitable position which has been imposed upon these employees through no fault of their own and recognizes the merits of their case for legislative relief. This Department supports enactment of H.R. 1291.

The Office of Management and Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report on H.R. 1291 for the consideration of the committee.

Sincerely,

H. LAWRENCE GARRETT, III.

○

BEST COPY AVAILABLE